IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.732/2002

Decided on.7.9.2007

Ranjit Singh Guleria. **…Petitioner.**

Versus

Union of India and others. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes*

For the petitioner : **Ms. Vandana Kuthiala, Advocate.**

For the respondents **Mr. Sandeep Sharma, Asstt. Solicitor General of India for respondent No.1.**

Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, D.A.Gs. for respondent No.2.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of the present petition, which can be culled out from the pleadings of the parties, are that the Government of India had promulgated a scheme known as "Freedom Fighters Pension Scheme, 1978 to recognize the sacrifices made by those who had participated in the freedom movement of the country. The Freedom Fighters Pension Scheme was further liberalized in the year 1980 and its nomenclature was changed to the 'Swantarntarta Sainani Samman Pension Scheme, 1980'. The petitioner submitted application to respondent No.1 on 21st September, 1995 along with certificate issued in his favour by Shri Chet Ram, who was the recipient of pension. He had also submitted application to respondent No.2 for the grant of State Samman Rashi under the H.P. Freedom Fighters Samman Rashi Yojna,

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes

1985 in the year 1995. Initially the case of the petitioner was rejected by the respondent-State but subsequently his claim was placed before the Sub-Committee of the H.P. Freedom Fighters Welfare Board in its 38th meeting held on 21st March, 1996. The Sub Committee reconsidered the petitioner's plea and confirmed his sufferings during the Praja Mandal Movement and he was declared Freedom Fighter and was held entitled to the benefits accruing under the H.P. Freedom Fighters Samman Rashi Yojna, 1985 with effect from 21st March, 1996. The case of the petitioner was forwarded by the State Government to respondent No.1 vide letter No.GAD-F-F(4)-3/95 dated 21st June, 1996. He submitted fresh documents to respondent No.1 vide communication dated 19th November, 1996. The Government of India informed the petitioner on 10th February, 1997 that Ministry considers the claim of externment/underground sufferings against verbal orders of the Raja of Bilaspur State before it was merged into the Indian Union on the basis of certification of the-then Deputy Superintendent of Police, Superintendent of Police, Minister Incharge concerned with the matter of suffering. He was called upon by way of letter dated 10th February, 1997 to furnish original of the certificate issued by Ex-Deputy Superintendent of Police Sh. Kartar Singh in proof of his suffering. He informed the authorities that he had already sent the original certificate issued by Sh. Kartar Singh, Ex-Deputy Superintendent of Police. He was not granted pension under the Swantarntarta Sainani Samman Pension Scheme, 1980 and he approached this Court by way of writ petition bearing CWP No. 403/98. This Court decided the writ petition on 7.6.1999. The operative portion of the judgment dated 7.6.1999 reads thus:

> **"We find that from the categorical statement of the State Government about the sufferings of the petitioner in the Praja Mandal Movement and granting him the pension under the**

State Scheme and further recommending his case to the respondent-Union of India, the grounds again reiterated by the respondent-Union of India in the communication dated 7th January, 1998 addressed to the petitioner are not found to be factually correct and wrong impression has been given to the court by way of affidavit filed by the Under Secretary to the Government of India that the State Government has not awarded pension to the petitioner and his case was never recommended by the State Government to respondent-Union of India."

Respondent No.1 again rejected the case of the petitioner on 26.7.1999. He filed a writ petition assailing the order dated 26.7.1999 by way of writ petition bearing CWP No. 538/99. The writ petition bearing No. 538 of 1999 was allowed to the extent that the impugned order was quashed and set aside and respondent No.1 was directed to reconsider and decide the claim of the petitioner in view of the supporting documents furnished along with his application and on the basis of the observations made by this Court. Respondent No.1 again rejected the case of the petitioner on 7.2.2001. The petitioner had assailed before this Court by way of present petition order dated 7.2.2001.

Ms. Vandana Kuthiala, Advocate had strenuously argued that order 7.2.2001 is not sustainable in the eyes of law. She also contended that the decision dated 7.2.2001 is in conflict with the observations made by this Court while deciding CWPs No. 403/98 and 538 of 1999 decided on 7.6.1999 and 8.11.2000.

Mr. Sandeep Sharma, Assistant Solicitor General of India had supported the order dated 7.2.2001.

I have heard the learned counsel for the parties and perused the record.

It is evident from the reading of the Swantarntarta Sainani Samman Pension Scheme, 1980 that a person who remained underground for more than 6 months or a person interned in his home or externed from his district provided the period of internment or externment six months or more is eligible to get the pension. The applicant is required to furnish the following documents to substantiate his claim for remaining underground as well as internment or externment.

> ***"Remained Underground:***
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> **Documentary evidence by way of Court's/Government orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention and in the case of non-availability of records certificates from veteran freedom fighters who had themselves undergone imprisonment for two years or more belonging to the same administrative unit and their area of operation was the same as that of the applicant.**
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> ***Internment or Externment:***
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> **(i) Order of internment or externment or any other corroboratory documentary evidence from official records.**
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> **(ii) If the official records are not available, Certificates from prominent freedom fighters who had themselves undergone imprisonment for two years or more and should belong to the same administrative unit before the reorganization of States and their area of operation must be the same."**

It will be apt to reproduce the entire text of circular No. 14/77 issued by respondent No.1 on 12th August, 1977 under caption "Freedom Fighters Pension "Scheme, 1972-State verification reports regarding":-

> **"In continuation of Circular No.3/76, dated 12.1.1976 it is again emphasized that no Central Pension should be sanctioned in future except on the basis of State Government's verification and recommendation. In case no State Report has been received, the case should be referred to the State Government**

and finalized only on the basis of their specific recommendations."

Respondent No.1 has also taken a decision as is evident from the language of letter dated 10th February, 1997 that the claim of externment/ underground sufferings against verbal orders of the Raja of Bilaspur State before it was merged into the Indian Union on the basis of certification of the-then Deputy Superintendent of Police, Superintendent of Police Minister Incharge concerned with the matter of sufferings were considered for claim for grant of Swantarntarta Sainani Samman Pension. The relevant extract of communication dated 10th February, 1997 reads thus:

"This Ministry considers claim of externment/underground sufferings against verbal orders of the Raja of Bilaspur States before they are merged into the Indian Union on the basis of certification of the-then Deputy Superintendent of Police, Superintendent of Police Minister Incharge concerned with the matter of sufferings."

It is in this background that the case of the petitioner is required to be considered by this Court. The petitioner had submitted his application alongwith certificate of Sh. Chet Ram, Freedom Fighter on 21.9.1995. The State Government had recognized the petitioner as a Freedom Fighter under the H.P. Freedom Fighters Samman Rashi Yojna, 1985 on 21.3.1996. His case has been forwarded to respondent No.1 on 21.6.1996. He had also submitted the certificate issued in his favour by Sh. Kartar Singh, Ex-Deputy Superintendent of Police. He had supplied the copies of the documents/certificates issued in his favour by the various Freedom Fighters, who were getting the pension under the Freedom Fighter's Pension Scheme, 1972 and the Grant of Swatantrata Sainik Samman Pension, 1980 as is evident from the contents of Annexure PD. Despite the documents supplied by the petitioner, his case was rejected

by respondent No.1. This Court had directed respondent No.1 while deciding CWP No.403/1998 to reconsider the case in view of the observations made in the judgment. It was expected from respondent No.1 to take into consideration the observations made by this Court while reconsidering the case of the petitioner for grant of pension. Respondent No.1 rejected the case again on 26.7.1999.

The petitioner was constrained to approach this Court by way of CWP No. 538/99, which was decided on 8.11.2000. This Court had discussed the rejection letter dated 26.7.1999 in its entirety, issue-wise. The pleas raised by respondent No.1 were rejected by this Court as is evident from the judgment of this Court dated 8.11.2000, to which the reference has been made by the learned counsel for the petitioner. The copy of the judgment rendered in CWP No. 538/99 was also made available for the perusal of the Court by the learned counsel appearing on behalf of the petitioner. The relevant portion of the judgment rendered in CWP No. 538/99 is reproduced here-in-below, which reads thus:

> **"It is not in dispute but is specifically admitted by the Government of India vide contents of Annexure PG that the concerned Ministry considers claim of externment/underground sufferings against verbal orders of Raja of Bilaspur State before it merged into the union of India on the basis of certification by the then Deputy Superintendent of Police, Superintendent of Police and Minister-in-charge concerned. In view of this admission, the certificate Annexure-PC issued by Shri Kartar Singh the then Deputy Superintendent of Police, Bilaspur State on 26.7.1985 could not be rejected on the ground that it was issued by him when he was no more in service and as such the certificate was not issued in his official capacity. Said Kartar Singh ceased to be Deputy Superintendent of Police of the Princely State of Bilaspur in October 1948 till which date the petitioner allegedly remained externed from the State, therefore, during the**

continuation of said Kartar Singh as Deputy Superintendent of Police of the Erstwhile State of Bilaspur neither the petitioner could approach him to grant him the requisite certificate nor Shri Kartar Singh would have issued such a certificate to an extenred person being the employee of the ruler on whose oral orders the petitioner is alleged to have been externed. Even according to the contents of Annexure-PG, the certification about externment/remaining underground is required to be made by then concerned official and not by such person who continued to be in service till the date of issue of certificate. Be it stated here that on the basis of the certificates issued by said Shri Kartar Singh, Freedom Fighter's pensions have been awarded to many persons claiming to be Freedom Fighters to which we shall refer a little later. In any case, the certificate issued by Kartar Singh could not have been rejected on the ground that it was not issued by him in his official capacity.

The other certificate, that is, Annexure-PA purporting to have been issued by Shri Chet Ram, Freedom Fighter and the certificate issued by Shri Narotam Datt Shastri Ex-M.L.A. and Vice-President of Bilaspur Prajamandal could also not be termed as having been issued by ineligible persons for the reasons that they are the renowned Freedom Fighters of the State of Himachal Pradesh. On the basis of the certificates issued by them pensions as Freedom Fighter had been granted in various cases. A reference may here be made to some of such cases. In CWP No. 540 of 1990 (Lekh Ram vs. Union of India and another) decided on 11.5.1993, a Division Bench of this Court held the petitioner therein entitled for the pension under the scheme on the basis of the certificates issued amongst others by S/Shri Chet Ram, Freedom Fighter and Kartar Singh, Ex-Dy. S.P. aforesaid. In CWP No. 466 of 1995 (Sant Ram vs. Union of India and another) decided on 21.9.1995, similar claim of the petitioner therein was allowed on the basis of certificates issued by Ex-Dy.S.P. Kartar Singh aforesaid and two Freedom Fighters. In CWP No.745 of 1995 (Narain Dass vs. Union of India and another) decided on 21.9.1995, the petitioner therein was held entitled for grant of Freedom Fighter's pension on the basis of the certificates

issued by S/Shri Narotam Datt Shastri, Chet Ram, Freedom Fighters and Ex.Dy.S.P. Kartar Singh who have issued txhe certificates in favour of the petitioner in this case. In CWP No. 385 of 1994 (Chandu Ram vs. Union of India and another) decided on 22.3.1995, the petitioner therein was held entitled for grant of Freedom Fighter's pension on the basis of the certificates issued by S/Shri Narotam Datt Shastri aforesaid, Khushi Mohammad and Ganga Ram Bhardwaj, Freedom Fighters and it was held that the certificate issued by Shri Narotam Datt Shastri was sufficient to prove the claim of the petitioner. In CWP No. 539 of 1990 (Prabhu Ram vs. Union of India and another) decided on 29.12.1994, the petitioner therein was held entitled to Swatantarta Sainik Samman pension on the basis of the certificates issued by Shri Kartar Singh, Ex.Dy. S.P. and a few other certificates issued by Freedom Fighters and an Ex.M.L.A. In CWP No. 756 of 1995 (Jeet Ram vs. Union of India and another) decided on 21.9.1995, the petitioner threrein was held entitled for the grant of Freedom Fighter's pension on the basis of the certificates issued by S/Shri Narotam Datt Shastri, Ex-M.L.A., Chet Ram aforesaid and one more Freedom Fighter. In these circumstances, the certificates issued by S/Shri Chet Ram, Kartar Singh and Narotam Datt Shastri in favour of petitioner could not be rejected merely on the ground that those were issued by ineligible persons.

To substantiate the third ground of rejection of the case of the petitioner, respondent No.1 has relied on Annexure R-2, i.e. a communication dated 21.6.1998 from the Commissioner-cum-Secretary (GAD) to Government of Himachal Pradesh to the under-Secretary to the Union of India, Ministry of Home Affairs. It is apparent from the contents of Annexure R-2 that the State Government has not stated in the said communication that the petitioner is eligible for the grant of Samman as a Freedom Fighter. At the same time the State Government has not stated therein that the petitioner is not entitled for the same. What the State Government has informed vide Annexure R-2 is that the petitioner is not mentioned as a Freedom Fighter in the available records of

Freedom Fighters as maintained at the concerned District Headquarters, therefore, his case be decided on the basis of the documents furnished by the petitioner with his application and the report of the Deputy Commissioner, Bilaspur. However, the information given by respondent No.2, i.e. State of Himachal Pradesh, to respondent No.1 prima facie stand contradicted by the contents of the reply filed by respondent No.2 to this writ petition wherein it has been clearly and unambiguously stated that the claim of the petitioner was considered by a Sub-Committee of the Himachal Pradesh Freedom Fighters Welfare Board in its 38th Meeting held on 21.3.1996 and the said Committee confirmed his sufferings during the Prajamandal Movement and the petitioner was declared Freedom Fighter with the facilities to be granted to him with effect from 21.3.1996 onwards for his life time. In view of this reply, respondent No.2 could not claim that it has no record what-so-ever about the sufferings of the petitioner as a Freedom Fighter. Since the recommendations of the State about the claim of a Freedom Fighters does not appear to be binding on the Union of India, therefore, want of any recommendation having been made by the State cannot be a valid and logical reason to refuse the claim of the petitioner, particularly, when the State itself has treated the petitioner a Freedom Fighter."

Despite the judgment rendered by this Court in CWP No. 538/99, the case of the petitioner has again been rejected on 7.2.2001. It is evident from the language of circular No.14/77 as quoted here-in-above that no central pension was to be sanctioned in future except on the basis of State Government's verification and recommendations. In the present case, the petitioner has been declared Freedom Fighter by the State Government with effect from 21.3.1996. The case of the petitioner was forwarded to respondent No.1 on 21.6.1996. The petitioner had supplied all the relevant documents initially with his application and as and when called for by respondent No.1. The petitioner had annexed with

application the certificates issued by Shri Chet Ram, Kartar Singh and Narotam Dutt Shastri. This Court had specifically held in the judgment dated 8.11.2000 that the certificates issued by Sh. Chet Ram, Kartar Singh and Narotam Dutt Shastri in favour of the petitioner could not be rejected merely on the ground that those were issued by ineligible persons. Shri Chet Ram and Narotam Dutt Shastri are recipient of pension being granted by respondent No.1. As far as the certificate issued by Sh. Kartar Singh is concerned, the same was supplied by the petitioner and the same was required to be taken into consideration in view of the communication dated 10th February, 1997, the relevant text of which has already been reproduced herein-above.

The first ground on which the case of the petitioner has been turned down as per letter dated 7.2.2001 is that there was no provision of Swatantra Sainani Pension Scheme for acceptance of verbal orders of Ex-Rulers for externment etc. This ground runs contrary to communication dated 10th February, 1997 wherein the verbal orders of the Raja Bilaspur State before it was merged into the Indian Union were being considered by the Ministry for the grant of pension. The second ground projected for the denial of pension is also contrary to the observations made by this Court in its decision dated 7.6.1999 in CWP No. 403/98 with regard to validity and credibility of the certificate of Sh. Kartar Singh. The third ground mentioned in communication dated 7.2.2001 is also contrary to the observations made by this Court in its decision dated 8.11.2000 rendered in CWP No. 538/99. This Court has specifically held that the certificate issued by Sh. Chet Ram and Sh. Narotam Dutt Shastri were valid and required to be considered. This Court had again reiterated in its decision dated 8.11.2000 that the certificate issued by Sh. Kartar Singh in favour of the petitioner was required to be considered for the grant of pension in

favour of the petitioner. The fourth ground again with regard to the certificate issued by Sh. Kartar Singh is contrary to the observations made by this Court in decisions dated 7.6.1999 and dated 8.11.2000 in CWP No. 538/99. Initially the case of respondent No.1 before this Court was that certificate of Sh. Kartar Singh was not on record and secondly the petitioner was called upon to submit the original certificate issued in his favour by Sh. Kartar Singh. Now, when the certificate was on record, respondent No.1 has strongly taken the objection with regard to the authenticity of signatures of Sh. Kartar Singh. Respondent No.1 cannot be permitted to take the objections in piecemeal. This objection, it appears, has been taken by respondent No.1 with regard to authenticity of signatures of Sh. Kartar Singh to deny the claim of the petitioner for the grant of pension. This objection taken by respondent No.1 is untenable more particularly when this Court has already held in its two judgments itself that the certificate issued by Sh. Kartar Singh was required to be taken into consideration. The petitioner had only mentioned in the petiton that he had started participating in the freedom movement with effect from May, 1946 onwards. Sh. Chet Ram had given the instance of the petitioner's participating in one of the demostrations in the month of September, 1946. The ground No.5 was not taken earlier while rejecting the case of the petitioner. Similarly the ground No.6 is also against the spirit of the scheme. This ground has also been taken for the first time in communication dated 7.2.2001. The plea that a boy of 16 years of age could not participate in the freedom movement is liable to be rejected. In the freedom movement the participation of the freedom fighters was collective and they were dependent on each other. The observation that since the petitioner had participated in heinous crime which led to his externment requiring the Ruler to admonish the petitioner, are wholly

uncalled for. This observation in para No.6 has been made in defiance of the spirit of the scheme. The matter could be viewed from another angle by respondent No.1 by taking a reasonable view that they were dealing with the case of the petitioner, who at the age of 16 years was externed and had suffered during that period. The plea raised by respondent No.1 in the reply that the case of the petitioner was not recommended by the State Government in its report dated 21.6.1996 has been dealt with at length by this Court in its judgment dated 8.11.2000 rendered in CWP No. 538/99. Respondent No.1 had again chosen to ignore this observation made by this Court with regard to communication dated 21.6.1996.

This can be viewed yet from another angle. The State itself has declared the petitioner to be the Freedom Fighter with effect from 21.3.1996 on the basis of the record produced before the Sub Committee. The forwarding of the case by the State Government vide letter dated 21.6.1996 has not been viewed in right perspective by respondent No.1 more particularly in view of the circular dated 12th August, 1977.

Consequently the writ petition is allowed in view of the observations made hereinabove. Annexure PG dated 7.2.2001 is quashed and set aside. Respondent No.1 is directed to grant pension to the petitioner with effect from 21.9.1995 with interest @ 9% within a period of 8 weeks from the date of receipt of certified copy of this judgment. The petitioner is also held entitled to costs, which are quantified at Rs. 11,000/-.

(Rajiv Sharma), Judge

7.9.2007 **Awasthi**